

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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|--|---|----------------|
| In the Matter of the Petition                            | : |                |
| of   | : |                |
| <b>THANOS AND DANIELA KAMILIOTIS</b>                     | : | DETERMINATION  |
|  | : | DTA NO. 818811 |
| for Redetermination of a Deficiency or for Refund of New | : |                |
| York State Personal Income Tax under Article 22 of the   | : |                |
| Tax Law and New York City Personal Income Tax under      | : |                |
| the Administrative Code of the City of New York for the  | : |                |
| Years 1994, 1995 and 1996.                               | : |                |

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Petitioners, Thanos and Daniela Kamiliotis, 71 Putnam Park Road, Bethel, Connecticut 06801, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under the Administrative Code of the City of New York for the years 1994, 1995 and 1996.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 90 South Ridge Street, Rye Brook, New York on September 15, 2003 at 12:30 P.M. Petitioners appeared by Paul Scott, CPA. The Division of Taxation appeared by Mark F. Volk, Esq. (George Brand).

The final brief in this matter was due by December 12, 2003, and it is this date that triggers the three-month period for the issuance of this determination.

***ISSUES***

I. Whether petitioners were domiciled in the State and City of New York and spent more than 30 days each year in the State and City and were thus taxable as resident individuals for each of the three years at issue.

II. Whether petitioners, if not domiciled in the State and City, maintained a permanent place of abode in the State and City and spent more than 183 days each year within the State and City and were thus taxable as resident individuals.

III. Whether petitioners, if determined to be taxable as nonresidents of the State and City, have adduced sufficient documentation to substantiate allocation of wage income to sources within and without the State and City.

IV. Whether the Division of Taxation properly disallowed as unsubstantiated alimony payments allegedly made by petitioner Thanos Kamiliotis to his former spouse, commission expenses claimed by Edit, LTD, an S corporation wholly owned by petitioner Thanos Kamiliotis and Federal Schedule C business expenses claimed by petitioner Daniela Kamiliotis.

V. Whether petitioners are liable for penalties imposed pursuant to Tax Law § 685(b) for negligence and Tax Law § 685(p) for substantial understatement of liability.

### ***FINDINGS OF FACT***

1. Petitioners herein, Thanos and Daniela Kamiliotis, are husband and wife who timely filed New York State and City personal income tax returns for the years 1994, 1995 and 1996. The returns for all three years at issue were filed on the basis that petitioners were nonresidents of both the State and City of New York. Petitioners' State and City personal income tax returns were not submitted in evidence since said returns, along with the Division of Taxation's ("Division") entire audit file, were destroyed in the September 11, 2001 attack on Two World Trade Center. From statements of personal income tax audit changes issued by the Division on August 5, 1999, it can be determined that petitioners' New York State returns for 1994, 1995 and 1996 reported New York State adjusted gross income (computed as though residents) of \$82,267.00, \$134,254.00 and \$152,542.00, respectively. It is not known what portion of claimed

New York State adjusted gross income computed as though residents was reported as having been derived from or connected with New York State sources. The record herein does not reflect the gross wages or net income from self-employment which may have been reported by petitioners on their respective City of New York nonresident earnings tax returns.

2. The Division selected petitioners' returns for examination and thereafter assigned the audit to its Manhattan District Office, which office was, until September 11, 2001, located in Two World Trade Center. The audit was completed in the summer of 1999 and on August 5, 1999, the Division issued statements of personal income tax audit changes to petitioners which proposed the following changes:

| <b>ITEM</b>                                 | <b>1994</b>  | <b>1995</b>  | <b>1996</b>  |
|---|--------------|--------------|--------------|
| Audit increases to NYS income               |              |              |              |
| Disallowed business expenses                | \$11,017.00  | \$6,611.00   | \$3,645.00   |
| Disallowed sub S expenses - commissions     | 37,155.00    | 34,000.00    | 41,000.00    |
| Disallowed alimony paid                     | 15,000.00    | 15,000.00    | 15,000.00    |
| Total net adjustments                       | 63,172.00    | 55,611.00    | 59,645.00    |
| NYS income per return computed as residents | 82,267.00    | 134,254.00   | 152,542.00   |
| Corrected NYS adjusted gross income         | \$145,439.00 | \$189,865.00 | \$212,187.00 |

The remarks section of the statements of personal income tax audit changes contained the following explanation of the changes being proposed as a result of the Division's examination:

Taxpayers are deemed to be domiciles (sic) and/or statutory residents of NYS & NYC since they failed to prove that they changed their domicile or that they spent less than 183 days in NYS & NYC in each year of the audit period.

If taxpayers prove a change in domicile or statutory resident status allocation of wages is still at issue.

Taxpayers maintained a permanent place of abode in New York City.

Business expenses & sub chapter S corporation expenses (commissions) are disallowed as unsubstantiated. Alimony is disallowed as unsubstantiated.

3. On November 22, 1999, the Division issued a Notice of Deficiency to petitioners for the years 1994, 1995 and 1996 asserting that \$42,731.84 of additional New York State and New York City personal income tax was due together with interest and penalties. Penalties were asserted pursuant to Tax Law § 685(b) for negligence and Tax Law § 685(p) for substantial understatement of liability. Petitioners, unable to resolve this matter with the Division, filed a timely petition with the Division of Tax Appeals and this proceeding ultimately ensued.

#### ***DOMICILE AND RESIDENCY ISSUES***

4. Petitioners were admittedly domiciled in New York for the years immediately preceding the years at issue herein, residing in a rent controlled apartment located at 245 East 40<sup>th</sup> Street, Apt. 20C, New York, NY 10016 (hereinafter “the NYC apartment”) since 1986. The NYC apartment is approximately 720 square feet and has one bedroom, a living room, kitchenette and bathroom.

5. In the fall of 1990, petitioners purchased a 3,000 square foot house located at 71 Putnam Park Road, Bethel, Connecticut 06801(hereinafter “the Connecticut house”). Petitioner Thanos Kamiliotis testified that the Connecticut house was originally purchased as a weekend home, but that subsequent events in 1993 caused him and his wife to move out of the NYC apartment and into this house on a permanent basis. Petitioner Daniela Kamiliotis’s parents emigrated from Romania to the United States in 1990, and for the years 1994 through 1996 their tax returns listed their home address as 71 Putnam Park Road, Bethel, Connecticut 06801. It is not known if petitioner Daniela Kamiliotis’s parents resided in the Connecticut house for years

prior to 1994. It is also noted that Dorina Kamiliotis, petitioner Thanos Kamiliotis's emancipated daughter from a prior marriage, listed the Connecticut house as her permanent address on her tax returns for the three years at issue.

6. Petitioners registered to vote in Connecticut effective October 1992, and they have been members of the Assumption Greek Orthodox Church in Danbury, Connecticut since 1993. Petitioners registered their automobile in Connecticut; however, petitioner Thanos Kamiliotis retained his New York State driver's license because on those occasions when he went to the motor vehicle office in Connecticut he experienced long lines and he did not wish to wait. It is not known if Mrs. Kamiliotis possessed a driver's license during the years at issue and, if so, what state issued the license.

7. Both petitioners herein worked in New York City, and the Connecticut house was within customary and routine commuting distance (80 minutes by car and 100 minutes by train) of the City. At the hearing held herein, petitioners presented the testimony of Peter Tokas, the owner of a diner in Bethel, Connecticut, who testified that he regularly saw petitioners at the diner in the morning when they stopped to purchase coffee and a muffin prior to their commute to New York City. Mr. Tokas could not testify with certainty as to the time period that he regularly saw petitioners at his diner on their morning commute to New York City.

8. Petitioner Thanos Kamiliotis was the sole shareholder of Edit, LTD ("Edit"), an S corporation formed in New York in 1988. Although petitioner Thanos Kamiliotis was the sole shareholder of Edit, he was not active in its business affairs, instead leaving these matters to one Edward Diamond who was apparently the driving force behind the company. Mr. Diamond died on January 19, 1993, and his death placed great strain on Edit's ability to conduct business.

9. To counteract the adverse impact Mr. Diamond's death had on Edit's business activities, Mr. Kamiliotis enlisted the help of several family members, including Evelyn Kamiliotis, an emancipated daughter from his prior marriage. Prior to Mr. Diamond's death, Evelyn Kamiliotis resided in Montreal, Quebec, Canada; however, she purportedly moved to New York City on some unknown date in 1993 after Mr. Diamond's demise.

10. Upon her move to New York City in 1993, Evelyn Kamiliotis took up residence in the NYC apartment with petitioners. This living arrangement proved unacceptable because the NYC apartment was apparently too small to comfortably accommodate three adults. Sometime in 1993 petitioners decided to relocate to the Connecticut house and they assert that all of their clothing and all of their important personal possessions were thereafter moved to the Connecticut house. Evelyn Kamiliotis's Federal and New York State and City tax returns were all filed showing her permanent residence as the NYC apartment.

11. It is undisputed that for all three years in dispute petitioners paid the rent and all other expenses related to the maintenance and upkeep of the NYC apartment and that this apartment was a permanent place of abode maintained by petitioners for the years 1994, 1995 and 1996. Petitioners assert, however, that they did not spend more than 183 days each year within the State and City and that they therefore cannot be taxable as resident individuals under the so-called "statutory resident" provisions of Tax Law § 605(b)(1)(B). Petitioners admit that they occasionally stayed overnight at the NYC apartment, but that this occurred infrequently, perhaps once every four to six weeks. No diaries, logs, journals or other documentary evidence were adduced at the hearing to establish the number of days that petitioners spent within the State and City of New York for the years 1994, 1995 and 1996.

12. Petitioners assert that after 1996 they moved back into the NYC apartment when it was vacated by Evelyn Kamiliotis. Mr. Kamiliotis testified that he returned to the rent controlled NYC apartment because he was afraid that he would lose the apartment if he did not use it as his permanent place of abode.

### ***ALLOCATION OF WAGES ISSUE***

13. During the years at issue, Mr. Kamiliotis was employed by E. Boselli & Co. ("Boselli") as president and chief executive officer. Pursuant to a letter dated October 28, 1998, Piero Boselli, the vice-president and chairman of the board of Boselli, stated as follows:

Pleased be advised that Thanos Kamiliotis is a shareholder, officer and chief salesperson for E. Boselli & Co., Inc. In his role as salesmen, he is required to attend many shows out of the United States and the New York City area.

He has been attending these shows and doing major sales work in excess of twenty years.

14. Boselli maintained an office at 32 West 39<sup>th</sup> Street in New York City and it is this office that petitioner Thanos Kamiliotis utilized as his primary work location. Mr. Kamiliotis testified that he traveled frequently outside the State and City of New York in the performance of his duties for Boselli and he estimated that he spent in excess of 140 days a year outside both New York and Connecticut. No documentary evidence was presented to establish each specific day that Mr. Kamiliotis was working for Boselli outside the State or City of New York.

### ***ALIMONY ISSUE***

15. Thanos Kamiliotis and Irene Kolomvari were married in Montreal, Quebec, Canada on November 6, 1966. As noted earlier, they had two children from this marriage, Dorina Kamiliotis, born on December 16, 1967, and Evelyn Kamiliotis, born on December 1, 1969. Pursuant to a Certificate of Divorce issued by the Superior Court - Family Division of the

Province of Quebec, District of Montreal, the marriage between Thanos Kamiliotis and Irene Kolomvari was dissolved effective July 5, 1987.

16. Submitted in evidence was a document entitled “Agreement By and Between Thanos Kamiliotis and Irene Kolomvari” dated December 31, 1986. This agreement provided that Mr. Kamiliotis would pay Irene Kolomvari “as alimentary pension, a sum of fifteen thousand (United States) dollars (US \$15,000.00) annually, commencing January 1, 1987. . . .” The agreement was signed by both parties and their signatures were witnessed.

17. To substantiate that \$15,000.00 in alimony payments were made during each of the years at issue, petitioners submitted copies of wire transfer requests which show that on December 7, 1994, February 23, 1995 and January 11, 1996, the sums of \$15,000.000, \$19,000.00 and \$15,000.00, respectively, were transferred from Mr. Kamiliotis’s Chemical Bank account to the Canadian Imperial Bank of Commerce. The wire transfer requests reflect that all three transfers were made to an account bearing Evelyn Kamiliotis’s name and the forms listed her address as 3445 Drummond St., #601, Montreal, Quebec. Petitioners maintain that the alimony payments were made to Evelyn Kamiliotis on behalf of Irene Kolomvari as the result of Ms. Kolomvari’s fragile mental state which impaired her ability to function effectively.

### ***COMMISSION EXPENSE ISSUE***

18. As stated earlier, Edit, an S corporation which is wholly owned by petitioner Thanos Kamiliotis, was incorporated in New York State on May 3, 1988. Since 1992 Edit’s business address, as listed on its tax returns, was 32 West 39<sup>th</sup> Street, New York, NY, the same address utilized by Boselli, Mr. Kamiliotis’s employer. On its tax returns for 1994, 1995 and 1996, Edit claimed a deduction for commissions of \$37,175.00, \$34,000.00 and \$41,000.00, respectively. At the hearing held herein, petitioner’s accountant indicated that the tax returns incorrectly



characterized these deductions as commissions when in fact they were payments for outside labor. These payments were allegedly made to both of Mr. Kamiliotis's daughters and also to Mrs. Kamiliotis's parents. The following table represents the amounts claimed as deductions on Edit's tax returns for said payments:

| <b>INDIVIDUAL</b> | <b>1994</b> | <b>1995</b> | <b>1996</b> |
|-------------------|-------------|-------------|-------------|
| Dorina Kamiliotis | \$2,000.00  | \$3,000.00  | \$5,500.00  |
| Evelyn Kamiliotis | 2,000.00    | 3,000.00    | 5,500.00    |
| Andrei Codarcea   | 29,175.00   | 22,000.00   | 24,000.00   |
| Ileana Codarcea   | 2,000.00    | 2,000.00    | 6,000.00    |
| Total             | \$35,175.00 | \$32,000.00 | \$41,000.00 |

19. Tax returns filed by Edit for the years 1990, 1991 and 1992 (the 1993 return is not in evidence) reveal that it was a viable operating entity which generated a net profit in each year computed as follows:

| <b>ITEM</b>             | <b>1990</b>  | <b>1991</b>  | <b>1992</b>  |
|-------------------------|--------------|--------------|--------------|
| Gross receipts          | \$719,629.00 | \$503,438.00 | \$167,785.00 |
| Less cost of goods sold | 369,093.00   | 237,226.00   | 24,917.00    |
| Net gain                | 350,536.00   | 266,212.00   | 143,868.00   |
| Other income            | -0-          | 240,000.00   | -0-          |
| Total income            | 350,536.00   | 506,212.00   | 143,868.00   |
| Total expenses          | 289,222.00   | 279,967.00   | 138,449.00   |
| Ordinary income         | \$61,314.00  | \$226,245.00 | \$4,419.00   |

20. Edit's tax returns for the years 1994, 1995 and 1996 reported that it had received no income and that expenses totaled \$42,801.00, \$39,244.00 and \$44,638.00, respectively. As can be seen from the table in Finding of Fact "18", the vast majority of Edit's expenses for the three years at issue are the payments made to Mr. Kamiliotis's two daughters, father-in-law and

mother-in-law. Edit's tax returns for the next five years (1997 to 2001) suggest that little business activity was being conducted since gross receipts for all five years total \$14,306.00, while expenses for this same period totaled only \$19,192.00. No deductions were claimed by Edit on its tax returns for 1997 to 2001 for payments made to Mr. Kamiliotis's two daughters, father-in-law and mother-in-law; however, its returns for 1990, 1991 and 1992 reflect that deductions were claimed for payments made to Andrei and Ileana Codarcea under the rubric "commissions." For the 2002 tax year, Edit resumed business activities reporting gross receipts of \$120,417.00 and ordinary income of \$15,943.00. For the first eight months of 2003, Edit has generated over 1.3 million dollars in sales and commission income.

21. Edit's business involved importing fabrics from mills and manufacturers in Europe and selling them in United States and Canadian markets. As part of its business, Edit contracted for and purchased prints, designs, prototypes and samples which were used in developing new merchandise and new lines of fabric.

22. Andrei and Ileana Codarcea both completed their formal education in Romania in the late 1950s or early 1960s. Andrei Codarcea had a degree in stage and costume design and also a degree from the Dramatic and Cinematographic Art Institute. Mr. Codarcea had achieved fame and wide recognition in his native country of Romania. Ileana Codarcea holds degrees in textile design and fine arts.

23. Several affidavits were submitted post-hearing which establish that the Codarceas prepared and furnished to Edit new prints, designs, prototypes, samples and knits on a regular and continuous basis during the years at issue. The Codarceas also provided these same services to Edit for years both prior and subsequent to the years in dispute.

24. With respect to the services that Evelyn Kamiliotis provided to Edit it is asserted that she shopped the store, the piece goods market and did administrative work. It is alleged that Dorina Kamiliotis likewise rendered services to Edit. Neither Evelyn Kamiliotis nor Dorina Kamiliotis appeared at the hearing to offer their testimony and no affidavits were offered in lieu of their testimony. Petitioner Thanos Kamiliotis's testimony regarding the services his daughters provided to Edit for the years 1994, 1995 and 1996 was vague and unconvincing.

25. Andrei and Ileana Codarcea filed Federal income tax returns for 1994, 1995 and 1996 reporting the payments they received from Edit as taxable business income on said returns. The Codarceas also filed New York State and City nonresident income tax returns for these three years reporting that the business income received from Edit had been entirely derived from New York State and City sources.

26. Evelyn Kamiliotis and Dorina Kamiliotis each filed Federal income tax returns for 1994, 1995 and 1996 reporting the payments they received from Edit as taxable business income on said returns. Evelyn Kamiliotis also filed New York State and City tax returns reporting the payments received from Edit as taxable income. Dorina Kamiliotis, a nonresident of the State and City of New York, did not file New York State and City returns for the 1994, 1995 and 1996 tax years.

#### ***SCHEDULE C EXPENSE ISSUE***

27. During the years 1994, 1995 and 1996, petitioner Daniela Kamiliotis engaged in business as a designer under the business name "Designs by Daniela K." Her business was conducted as a sole proprietorship utilizing office space at 32 West 39<sup>th</sup> Street, New York, NY, the same office used by both Boselli and Edit. On July 16, 1993, Mrs. Kamiliotis filed an Application For a Registered Identification Number with the Federal Trade Commission

indicating that her business activities involved importing scarves, and mens and ladies sports wear.

28. Federal Schedule C, Profit or Loss From Business, filed by Mrs. Kamiliotis for the 1994 tax year reported gross and net income of \$3,100.00 and expenses of \$11,017.00, thus producing a net loss of \$7,917.00. Federal Schedule C's were not made part of the record for 1995 and 1996. As noted in Finding of Fact "2", the Division, for 1994, disallowed \$11,017.00 of Daniela Kamiliotis's claimed business expenses and this is the exact same amount as claimed on her Federal Schedule C for 1994. Accordingly, it would then appear that the expenses claimed on Federal Schedule C for 1995 and 1996 would total \$6,611.00 and \$3,645.00, respectively, as these are the amounts which were disallowed on audit. It cannot be determined from this record what Mrs. Kamiliotis reported for gross and net income on Schedule C for the years 1995 and 1996, and thus it is not known whether she reported net income or net loss for these two years.

29. To support the business expenses claimed by Daniela Kamiliotis on her Federal Schedule C's for 1994, 1995 and 1996, petitioners submitted summary worksheets detailing her expenses, together with supporting receipts, bills, invoices and credit card slips and monthly statements. While some personal expenses were included with the documentation, it is apparent that petitioners' accountant, when preparing their returns, did not claim those expenses which he deemed personal in nature as deductible business expenses.

### ***PENALTIES ISSUE***

30. Petitioners have consistently utilized the services of a certified public accountant to prepare their tax returns and these returns have been filed in a timely manner. Petitioners have also paid any tax due as shown on their returns in a timely manner. Petitioners believe that there

is substantial authority and evidence to support the positions taken on their tax returns and that they have always acted in good faith. It is petitioners' position that if any tax due is found to be due for the years at issue, such deficiency is not due to negligence or intentional disregard of the Tax Law and that there is reasonable cause for the understatement of tax.

### ***CONCLUSIONS OF LAW***

A. Tax Law § 605(b)(1) defines a resident individual as follows:

Resident individual. A resident individual means an individual:

(A) who is domiciled in this state, unless (i) he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state . . . or

(B) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state, unless such individual is in active service in the armed forces of the United States.

B. While the Tax Law does not contain a definition of "domicile," a definition is provided in the Division's regulations (20 NYCRR 105.20[d]) which states as follows:

*Domicile.* (1) Domicile, in general, is the place which an individual intends to be such individual's permanent home - - the place to which such individual intends to return whenever such individual may be absent.

(2) A domicile once established continues until the person in question moves to a new location with the bona fide intention of making such individual's fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time; this rule applies even though the individual may have sold or disposed of such individual's former home. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individual's intention in this regard, such individual's declarations will be given due weight, but they will not be conclusive if they are contradicted by such individual's conduct. The fact that a person registers and votes in one place is important but not necessarily conclusive, especially if the facts indicated that such individual did this merely to escape taxation.

\* \* \*

(4) A person can have only one domicile. If such person has two or more homes, such person's domicile is the one which such person regards and uses as such person's permanent home. In determining such person's intentions in this matter, the length of time customarily spent at each location is important but not necessarily conclusive. It should be noted however, as provided by paragraph (2) of subdivision (a) of this section, a person who maintains a permanent place of abode for substantially all of the taxable year in New York State and spends more than 183 days of the taxable year in New York State is taxable as a resident even though such person may be domiciled elsewhere.

C. The distinction between domicile and residency was explained many years ago by the Court of Appeals in *Matter of Newcomb's Estate* (192 NY 238, 250):

Residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile.

It is well established that an existing domicile continues until a new one is acquired and the burden of proof to show a change in domicile rests upon the party alleging the change (*id.*). Whether there has been a change of domicile is a question "of fact rather than law, and it frequently depends upon a variety of circumstances which differ as widely as the peculiarities of individuals" (*id.* at 250). It is frequently stated that the test of intent with regard to a purported new domicile is "whether the place of habitation is the permanent home of a person, with the range of sentiment, feeling and permanent association with it" (*Matter of Bourne*, 181 Misc 238, 41 NYS2d 336, 343, *affd* 267 App Div 876, 47 NYS2d 134, *affd* 293 NY 785); *see, Matter of Bodfish v. Gallman*, 50 AD2d 457, 378 NYS2d 138).

While the standard is subjective, the courts and the Tax Appeals Tribunal have consistently looked to certain objective criteria to determine whether a taxpayer's general habits of living demonstrate a change of domicile. Among the factors that have been considered are:

(1) the retention of a permanent place of abode in New York (*see, e.g., Gray v. Tax Appeals Tribunal*, 235 AD2d 641, 651 NYS2d 740 *confirming Matter of Gray*, Tax Appeals Tribunal, May 25, 1995; *Matter of Silverman*, Tax Appeals Tribunal, June 8, 1989); (2) continued business activity in New York (*Matter of Erdman*, Tax Appeals Tribunal, April 6, 1995; *Matter of Angelico*, Tax Appeals Tribunal, March 31, 1994); (3) family ties in New York (*Matter of Gray, supra*; *Matter of Buzzard*, Tax Appeals Tribunal, February 18, 1993, *confirmed* 205 AD2d 852, 613 NYS2d 294); (4) continuing social and community ties in New York (*Matter of Getz*, Tax Appeals Tribunal, June 10, 1993); and (5) formal declarations of domicile (*Matter of Trowbridge*, 266 NY 283, 289; *Matter of Gray, supra*; *Matter of Getz, supra*).

D. In the present matter, petitioners have not met their burden of proof to establish that they changed their domicile from New York City to Connecticut prior to the years in issue. Initially, I note that their purchase of the Connecticut house in 1990 coincided with Andrei and Ileana Codarceas's immigration to this country in 1990. While it is known that the Codarceas utilized the Connecticut house as their permanent residence for the years 1994, 1995 and 1996, it appears that they moved into this house upon their relocation to the United States in 1990.

Petitioners' claim that they permanently left the NYC apartment when Evelyn Kamiliotis moved into said apartment is unconvincing given the fact that Evelyn appears to have a residence in Montreal, Canada, was accepting her mother's alimony payments in Canada and was apparently helping her as the result of a mental condition. Petitioners presented no documentary evidence to support that their important personal possessions were moved from New York City to Connecticut in 1993. Furthermore, examination of the many invoices submitted by Daniela Kamiliotis to substantiate business expenses reveal significant connections to New York, the use of New York health care professionals, and in several instances where she

received a credit slip for returned merchandise she listed her address as the NYC apartment. Finally, Thanos Kamiliotis's testimony regarding the purported change of domicile was unavailing and simply insufficient to show that petitioners possessed the required intent to permanently give up the NYC apartment and reside on a permanent basis in Connecticut. Accordingly, the Division properly determined that petitioners were domiciled in New York State and City for the years 1994, 1995 and 1996 and were taxable as resident individuals for these three years.

E. Assuming, *arguendo*, that petitioners had established a change of their New York domicile to Connecticut in 1993, they are still taxable as resident individuals for the years in dispute as statutory residents pursuant to Tax Law § 605(b)(1)(B). Clearly, the NYC apartment was a permanent place of abode (20 NYCRR 105.20[e][1]) and since petitioners submitted no credible evidence regarding their whereabouts during the years 1994, 1995 and 1996, they have failed to meet their burden of proof to show that they spent fewer than 183 days each year within the State and City of New York (*Matter of Kane*, Tax Appeals Tribunal, February 18, 1999).

F. Although the issue regarding the allocation of wages is rendered moot in light of the conclusion that petitioners are taxable as resident individuals, it is noted that no documentary or other credible evidence was adduced to support the days that Mr. Kamiliotis worked outside the State or City of New York for his employer. Accordingly, no allocation of wages to sources outside the State or City of New York could be allowed on this record.

G. Turning next to the issue of the alimony payments, I conclude that sufficient evidence has been presented to substantiate that Mr. Kamiliotis made alimony payments of \$15,000.00 each year at issue to his former spouse. Accordingly, petitioners are to be allowed a deduction for these payments.



H. With respect to the issue of the payments made by Edit to Andrei and Ileana Codarcea during the years 1994, 1995 and 1996, the record supports that the Codarceas were qualified individuals who provided valuable services to the company on a regular and continuous basis. Accordingly, it is concluded that Edit is entitled to claim the payments it made to the Codarceas as deductions on its tax returns for the years at issue.

I reach a different conclusion with respect to the payments made by Edit to both Evelyn Kamiliotis and Dorina Kamiliotis. The record simply does not support that these two individuals provided any services to Edit during the years 1994, 1995 and 1996 and therefore the Division properly denied the deductions claimed by Edit for these payments.

I. Addressing the Division's disallowance of petitioner Daniela Kamiliotis's Federal Schedule C expenses next, I find that substantial evidence has been submitted to support said expenses as claimed on the 1994, 1995 and 1996 tax returns and that petitioners are therefore entitled to claim these expenses.

J. Finally, with respect to the negligence penalty, I do not believe that the deficiency found to be due from this determination was the result of negligence or intentional disregard of the Tax Law and therefore said penalty is canceled. Turning lastly to the substantial understatement of liability penalty, I conclude that petitioners could reasonably assert that they changed their domicile to Connecticut and that the understatement of tax was due to reasonable cause. Accordingly, the substantial understatement of liability penalty is likewise canceled.

K. The petition of Thanos and Daniela Kamiliotis is granted to the extent indicated in Conclusions of Law "G", "H", "I" and "J"; the Division of Taxation is directed to recompute the

Notice of Deficiency dated November 22, 1999 to be consistent with the determination rendered herein; and that, except as so granted, the petition is in all other respects denied.

DATED: Troy, New York  
March 11, 2004

/s/ James Hoefer  
PRESIDING OFFICER